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May 4, 2010

E-File

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

226950

Re: STB Docket No. AB-6 (Sub-No. 470X), BNSF Railway Company –
Discontinuance Of Trackage Rights Exemption – In Peoria and
Tazewell Counties, Illinois

Dear Ms. Brown:

At this late stage of the proceeding, BNSF Railway Company ("BNSF") is reluctant to file a response to the filing made by Toledo, Peoria & Western Railroad Company ("TP&W") on April 26, 2010 ("TP&W Response"). BNSF is concerned, however, that the Board may view BNSF silence as an endorsement of the distorted and misleading allegations set forth in the TP&W Response. Consequently, BNSF offers this very brief response.

TP&W raises for the first time the derailment by the Tazewell & Peoria Railroad, Inc. ("TZPR") which severed BNSF's main track and, according to TP&W, isolated BNSF's interchange yard (the "Uptown Yard") from TP&W. TP&W claims that BNSF's failure to repair the track "is preventing a direct and efficient interchange between BNSF and TP&W". TP&W Response at 6. One can only assume that this totally distorted allegation is an attempt by TP&W to cover up the fact that TP&W has its own trackage rights which, for some reason unknown to BNSF, TP&W is not using. In any event, TP&W conveniently omits the following salient facts: (1) the Uptown Yard was out of service at the time of the derailment; (2) the Uptown Yard would require extensive rehabilitation to be put back in service; (3) the Uptown Yard had not been used to interchange with TP&W in decades; and (4) the Uptown Yard still connects to TZPR tracks on the east end and it was this eastern connection that was used by BNSF prior to 1982.

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TP&W argues that the trackage rights agreement at issue in this proceeding cannot be cancelled absent prior discontinuance approval by the Board. The trackage rights agreement was cancelled in 1982, but the effectiveness of the cancellation is predicated on the Board approving the discontinuance of the trackage rights. BNSF is obviously aware of that fact which is why BNSF initiated this proceeding in the first place.

TP&W states that it has reviewed its records and determined that it pays the intermediate switch charges on traffic from TP&W to BNSF via TZPR. A review of those records would undoubtedly also have revealed that BNSF pays the intermediate switch charge on traffic moving from BNSF to TP&W via TZPR, a fact TP&W did not wish to share with the Board.

In a continuing effort to distort, TP&W misstates BNSF's contention that TZPR's intermediate switch operation may be more efficient than a direct TP&W-BNSF interchange. BNSF point is simply that terminal operators can often switch traffic more efficiently within the confines of their terminal than the line-haul carriers. That is why terminal operators continue to exist.

TP&W correctly points out that the receiving carrier can specify the interchange location. But BNSF has not been the delivering carrier for 28 years. TZPR and its predecessor have been the delivering carriers for nearly three decades.

Finally, TP&W persists in distorting the underlying purpose of its misguided opposition in this proceeding: TZPR's increase in the intermediate switch charge in January 2010, which is reducing the compensation received by TP&W. TP&W's opposition is not about competition or service to shippers, it is all about self-interest and greed.

BNSF has initiated this proceeding to comply with its contractual commitment that, upon cancellation of the agreement, it seek to discontinue the trackage rights. TP&W has interjected itself in this proceeding to gain leverage in its financial dispute with TZPR.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell", written in a cursive style.

Karl Morell
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2010, I have caused a copy of the forgoing Letter to be served on all parties of record by first class mail.


Karl Morell